

AMENDED ITEM



Item No: 6.2
Title: Notice of Motion - Collapse of Confidence in Council's Internal Controls and Financial Management
Department: Councillor

12 October 2020 Ordinary Council Meeting

Reference: F2020/00039 - D14223786
Author: Greg Best, Councillor
Jilly Pilon, Councillor
Bruce McLachlan, Councillor
Troy Marquart, Councillor

Councillors Best, Pilon, McLachlan and Marquart have given notice that at the Ordinary Council Meeting to be held on Monday 12 October they will move the following motion:

- 1 That Council notes with great concern the recent Audit Report by the NSW Audit Office around Council's "internal controls" over local infrastructure contributions (LICs) where serious concerns were raised around risks associated with Administration of LICs highlighting that up until June 2019 this Council unlawfully accessed \$13.2 million for unapproved administration activities.**
- 2 Further Council's confidence is significantly eroded in the knowledge that now four CFOs, Chief Financial Officers, have resigned or been replaced in the past three years and that this Council is currently again recruiting.**
- 3 As Elected Representatives and trusted custodians of the Ratepayer purse, this year budget alone reflecting \$573 million 2020 FY, with \$335.5 million of this being Rates and Charges, this Council having regard to the issues outlined below a-k, now formally seeks independent advice and assistance from the OLG and the Office of the Auditor General to better understand this Council's compliance with our financial control standards, internal controls, transparency and probity.**
 - a That this Council in FY19/20 budgeted for an \$18 million loss with a now Q3 result of \$41 million loss with preliminary adjustments forecast resulting in full year loss eclipsing \$50 million. Compounding this, Council notes it's exhibited Budget FY20/21 also reflects a multi-million dollar loss.**
 - b That Council's internal controls in the FY18/19 were unable to deliver the Accounts for some nine months past their due date requiring several Departmental extensions understandably exacerbating the crafting of the FY19/20 budget.**
 - c The scathing commentary attached to the recently released Audit Office's Independent Report.**

6.2 Notice of Motion - Collapse of Confidence in Council's Internal Controls and Financial Management (contd)

- d Council also notes the extraordinary waste of millions of dollars through actively terminating binding Contracts and willingly paying extensive damages.*
 - e That Council's lack of internal controls and transparency have resulted in this Council abandoning its \$171 million Civic Project known as the Gosford Art Centre and Library costing millions.*
 - f The escalating NSW Court List associated with this Council, again costing millions.*
 - g Council's confidence is further highly eroded due to the recognition that the current recruitment process on foot for a new CFO will be our fifth CFO in this term of Council alone.*
 - h Further to the Auditor General's Report, Council notes the exponential worsening of its now more than \$200 million infrastructure spending backlog.*
 - i Council's processes leading up to the extinguishment and refund of a \$5 million State Government Grant for a Community Walkway that had already commenced.*
 - j Staffing levels now up by some 500 FTEs since the Amalgamation with total Council employment being approximately 2,500 Staff plus \$9 million in Contractors, some being remunerated at \$1,300 a day.*
 - k Council's recent \$50 million borrowing with \$25 million being new money that forms part of Council's current \$232 million borrowing. Note this ratio is not excessive, however the interest rate is 6.25% in the current market.*
 - l That Council also notes the importance of sound internal controls as a result of its decisions around looming issues such as the Coastal Erosion and Property Losses and the extraordinary risks Council now faces with regard to its stance on the Airport.*
- 4 That having regard to the wide range of issues identified above and the sobering commentary from the Office of the Auditor General, this Council now seeks to take a proactive, responsible and self-reporting position through requesting the OLG, the Audit Office and the Minister to step in and assist Council in embedding an appropriate Review Team in to the back end of Council's systems to identify issues and appoint a temporary independent CFO as Review Oversight, such are our concerns as the Elected Body.**

Chief Executive Officer Response

The Chief Executive Officer considers that this Notice of Motion has legal, strategic, financial or policy implications which should be taken into consideration by the meeting. As a result, the Chief Executive Officer has provided a report in relation to the Notice of Motion. This report is provided as Attachment 1.

6.2 Notice of Motion - Collapse of Confidence in Council's Internal Controls and Financial Management (contd)

Attachments

- 1** CEO Response - Notice of Motion - Collapse of Confidence in Council's Internal Controls and Financial Management D14233038

Title: CEO Response - Notice of Motion - Collapse of Confidence in Council's Internal Controls and Financial Management

Department: Chief Financial Officer



12 October 2020 Ordinary Council Meeting

Reference: F2020/00039 - D14233038

Author: Vivienne Louie, Unit Manager, Financial Performance
Krystie Bryant, Executive Manager, People and Culture

Executive: Gary Murphy, Chief Executive Officer

Summary

This report provides a response to Item 6.2 - Notice of Motion – Collapse of Confidence in Council's Internal Controls and Financial Management.

It is noted that Councillor Best upon submitting his Notice of Motion specifically sought staff confirmation of the figures within the Motion. Due to other events, the Motion was only able to be reviewed with regard to the figures as part of preparing this CEO response.

Motion: *That Council notes with great concern the recent Audit Report by the NSW Audit Office around Council's "internal controls" over local infrastructure contributions (LICs) where serious concerns were raised around risks associated with Administration of LICs highlighting that up until June 2019 this Council unlawfully accessed \$13.2 million for unapproved administration activities.*

Staff Comments:

During the 2018-19 financial year end audit process, Council identified the error of using funds collected under the section 7.11 contribution plans to pay for unapproved administration expenses for the former Gosford City Council plans from 2001 to 2019. Administration fees were either deducted from contribution plans in excess of the allowed amount for administration fees or deducted where the contribution plan did not allow for administration fees. An adjustment has been made to reimburse the impacted plan balances accordingly.

- \$7.2 million for administration fees from 2001 to 2019
- \$1.2 million for investment losses from Collateralised Debt Obligations (CDO) allocated to LICs
- \$4.8 million to reimburse the contributions plans for lost interest income from the administration fees and investment losses from CDO's

Of the \$13.2 million, \$11.6 million were incurred under the former Gosford City Council, with the balance (including interest) under the Central Coast Council.

Motion: *Further Council's confidence is significantly eroded in the knowledge that now four CFOs, Chief Financial Officers, have resigned or been replaced in the past three years and that this Council is currently again recruiting.*

Staff Comments:

Since merger Council has had two ongoing Chief Financial Officers. Two internal staff members have also temporarily acted in this role throughout this time during periods where the position was unfilled. Central Coast Council is now recruiting this position based on the departure of the second Chief Financial Officer.

Motion: *As Elected Representatives and trusted custodians of the Ratepayer purse, this year budget alone reflecting \$573 million 2020 FY, with \$335.5 million of this being Rates and Charges, this Council having regard to the issues outlined below a-k, now formally seeks independent advice and assistance from the OLG and the Office of the Auditor General to better understand this Council's compliance with our financial control standards, internal controls, transparency and probity.*

- a** *That this Council in FY19/20 budgeted for an \$18 million loss with a now Q3 result of \$41 million loss with preliminary adjustments forecast resulting in full year loss eclipsing \$50 million. Compounding this, Council notes it's exhibited Budget FY20/21 also reflects a multi-million dollar loss.*

Staff Comments:

Council has, following a year of natural disasters and the impact of COVID-19, undertaken a review of the Council's budget which reveals that its budgetary position has deteriorated since the March 2020 forecasted result. The forecasted deficit reported at that time of \$41 million is now expected to increase to \$89 million.

The Council is in a serious financial situation and faces an immediate and serious liquidity issue. Some expenditure over the past 12-18 months may have resulted in restricted funds being used contrary to the provisions of the *Local Government Act 1993*. This is still under investigation.

These issues have recently come to light due to reviews commissioned by the CEO and notwithstanding a previous audit and report that did not reveal the issues currently under investigation.

Council's CEO, Gary Murphy, has advised the Office of Local Government NSW of the financial issues.

- b** *That Council's internal controls in the FY18/19 were unable to deliver the Accounts for some nine months past their due date requiring several Departmental extensions understandably exacerbating the crafting of the FY19/20 budget.*

Staff Comments:

Section 413 of the *Local Government Act 1993* states that a Council must prepare financial reports for each year and must refer them for audit as soon as practicable.

Section 416 of the *Local Government Act 1993* states that a Council's financial reports for a year must be prepared and audited within the period of 4 months after the end of that year and that a Council may from time to time apply to the Departmental Chief Executive for an extension of that period.

Council applied to the Office of Local Government for and was granted an extension of time to prepare, audit and lodge the 2018-19 financial statements to 29 February 2020 due to the additional testing and samples required relating to implementation of a single IT system and Council's controls.

c The scathing commentary attached to the recently released Audit Office's Independent Report.

Staff Comments:

The report by the NSW Audit Office did highlight key findings for all audited Councils in relation to improvement in monitoring and reporting of contributions cashflow. This was not specifically for Central Coast Council.

d Council also notes the extraordinary waste of millions of dollars through actively terminating binding Contracts and willingly paying extensive damages.

Staff Comments:

This is the subject of a confidential matter regarding commercial in confidence information.

e That Council's lack of internal controls and transparency have resulted in this Council abandoning its \$171 million Civic Project known as the Gosford Art Centre and Library costing millions.

Staff Comments:

The main costs incurred by Council in relation to this project relate to property acquisitions and these properties now form part of Council's asset base.

f The escalating NSW Court List associated with this Council, again costing millions.

Staff Comments:

Direct legal expenses for the 2019/20 financial year were \$2,277,377.80. The major component of this was in relation to the Verde Terra Pty Ltd proceedings.

- g Council's confidence is further highly eroded due to the recognition that the current recruitment process on foot for a new CFO will be our fifth CFO in this term of Council alone.**

Staff Comments:

Since merger Council has had two ongoing Chief Financial Officers. Two internal staff members have also temporarily acted in this role throughout this time during periods where the position was unfilled. Central Coast Council is now recruiting this position based on the departure of the second Chief Financial Officer.

- h Further to the Auditor General's Report, Council notes the exponential worsening of its now more than \$200 million infrastructure spending backlog.**

Staff Comments:

Council's Infrastructure backlog as at 30 June 2019 was \$142.6 million.

- i Council's processes leading up to the extinguishment and refund of a \$5 million State Government Grant for a Community Walkway that had already commenced.**

Staff Comments:

The Winney Bay walk project was comprised of two stages, the Stage 1 works which are generally referred to as the Winney Bay Stairs, and the Stage 2 works which are generally referred to as the Winney Bay Clifftop Walk.

The Stage 1 works were fully funded by the Commonwealth Government under the Improving Your Local Parks and Environment Fund to the value of \$875,899. This phase of the project was physically completed and funding received.

On ground works for Stage 2 have not yet commenced as staff continue to prepare to go to community engagement with concept designs for Stage 2 works in accordance with previous Council resolutions. These Stage 2 works had separate approved State Government funding to the value of \$4.615M which has now been relinquished.

- j Staffing levels now up by some 500 FTEs since the Amalgamation with total Council employment being approximately 2,500 Staff plus \$9 million in Contractors, some being remunerated at \$1,300 a day.**

Staff Comments:

Central Coast Council's budgeted FTE for the 2016/2017 period was 2153 FTE. For the 2020/2021 period the budgeted FTE is 2442. The current employed workforce FTE is 2157, with the remaining roles currently vacant.

Previous reporting has been provided to Council on the use of contract staff. The rates for

these engagements are determined by the LGP808 and vendor panel arrangements in line with procurement requirements.

- k Council's recent \$50 million borrowing with \$25 million being new money that forms part of Council's current \$232 million borrowing. Note this ratio is not excessive, however the interest rate is 6.25% in the current market.***

Staff Comments:

Of the recent \$50 million borrowing \$27.4 million was used to refinance maturing debt and \$22.6 million was to assist in funding it's capital expenditure program. Council accepted an offer from National Australia Bank for a 20 year term at an interest rate of 2.87%.

Current external borrowings as at 30 June 2020 is \$236.6 million.

- l That Council also notes the importance of sound internal controls as a result of its decisions around looming issues such as the Coastal Erosion and Property Losses and the extraordinary risks Council now faces with regard to its stance on the Airport.***

Staff Comments:

Council has been subject to a number of external audits and review of its financial controls. Some of the recommendations from these reports have been implemented with the remainder currently in progress.

- Motion: That having regard to the wide range of issues identified above and the sobering commentary from the Office of the Auditor General, this Council now seeks to take a proactive, responsible and self-reporting position through requesting the OLG, the Audit Office and the Minister to step in and assist Council in embedding an appropriate Review Team in to the back end of Council's systems to identify issues and appoint a temporary independent CFO as Review Oversight, such are our concerns as the Elected Body.***

Staff Comments: There are no staff comments for this motion.

Link to Community Strategic Plan

Theme 4: Responsible

Goal G: Good governance and great partnerships

G2: Communicate openly and honestly with the community to build a relationship based on transparency, understanding, trust and respect.